

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-935-940
Issued to: Frank Campana

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2364

Frank Campana

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 15 August 1983, an Administrative Law Judge of the United States Coast Guard at Alameda, California, suspended Appellant's seaman's document for six months on twelve months' probation, upon finding him guilty of misconduct. The specification found proved alleges that while serving as wiper on board the United States S.S. PRESIDENT PIERCE under authority of the document above captioned, on or about 1600, 21 April 1983, Appellant did wrongfully disobey a lawful order of the First Engineer, Roy A. Carlson, in that he refused to pick up debris.

The hearing was held at Alameda, California, on 8 August 1983.

Appellant did not appear at the hearing and was not represented. The hearing proceeded in absentia. The Administrative Law Judge entered a plea of not guilty on behalf of Appellant.

The Investigating Officer introduced in evidence seven exhibits.

Appellant offered nothing in defense.

At the end of the hearing, the Administrative Law Judge rendered an oral decision, in which he concluded that the charge and specification had been proved. He served a written order on Appellant by certified mail, suspending all documents issued to Appellant for a period of six months, on twelve months' probation.

The Decision and Order was served on 16 August 1983. Appeal was timely filed and perfected on 22 August 1983.

FINDINGS OF FACT

The Investigating Officer's evidence, except for two exhibits, concerned the fact that Appellant was serving aboard the S.S.

PRESIDENT PIERCE at the alleged time, and the facts surrounding the service of the charges on him. The remaining two exhibits concerned the offense itself. They were a logbook entry and a letter from Appellant to the Investigating Officer. The logbook entry was made in substantial compliance with 46 U.S.C. 702 and was as follows:

21 APRIL 1983
AT SEA
ENROUTE KOBE/
SAN PEDRO
1600 HOURS

"THIS DATE, ART 32, FRANK CAMPANA,
WIPER, Z-93940 (sic) DID REFUSE TO
OBEY A LAWFUL ORDER FROM THE
1/A ENGINEER, R. A. CARLSON.

"FRANK CAMPANA, WIPER, Z-935940 IS
HEREBY TO BE DISCHARGED UPON ARRIVAL
AT SAN PEDRO, IN ACCORDANCE WITH RS
4596 (46 USC 701)."

"/s/ R. C. McCauley
PURSER

"/s/ W. A. Herrick
CHIEF ENGINEER

"/s/ L. Gellerman
MASTER

21 April 1983

"ABOVE LOG ENTRY WAS READ DISTINCTLY
AND AUDIBLY TO CAMPANA. CAMPANA
REFUSED THE COPY. STATEMENT WAS
GIVEN TO ENGINE DELEGATE RAYMOND E. CASE."

"/s/ W. A. Herrick
CHIEF ENGINEER

"/s/ L. Gellerman
MASTER

"/s/ R.C. McCauly
PURSER

21 April 1983
SEA
ENROUTE KOBE/SAN PEDRO
1600 HOURS

"SEAMAN CAMPANA'S REPLY:

"FRANK CAMPANA Z-934940 REFUSES TO
SIGN A STATEMENT."

"/s/ L. Gellerman
MASTER

"/s/ R. C. McCauly
PURSER

"/s/ W. A. Herrick
CHIEF ENGINEER

The letter from Appellant is addressed to the Investigating Officer and apparently concerns matters discussed when the charges

were served. It is the only evidence which mentions the debris and where it was, although it does not admit that there was any order given regarding picking up the debris.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that no lawful order was given to pick up debris.

APPEARANCE: pro se.

OPINION

The evidence does not establish that Appellant was ordered to pick up debris, or that he refused to do so.

The only evidence which discusses debris, what it was, or its location, is Appellant's letter. It does not connect the debris with the charge, or with an order, but, instead, appears to discuss it in connection with Appellant's conversation with the Investigating Officer at the time the charges were served. The letter is a response to whatever took place at that time.

To the extent that the letter admits facts used to prove the charge and specification, it is an admission by the person charged during a Coast Guard investigation. As such, it should not have been received in evidence. 46 CFR 5.20-120. It may not be considered in deciding whether the evidence supports the findings of the Administrative Law Judge.

There is no evidence to show the existence of the debris referred to in the specification, or what the order referred to in the logbook was. These are necessary elements of the specification. See Appeal Decision 1883 (TREVOR). In the absence of such evidence, the Administrative Law Judge's finding that the specification is proved is not supported.

CONCLUSION

The record does not contain sufficient evidence to support the findings of the Administrative Law Judge.

ORDER

The order of the Administrative Law Judge dated at Alameda, California, on 15 August 1983, is VACATED, the findings are SET ASIDE, and the charge and specification are DISMISSED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C. this 10th day of July, 1984.